

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

**Mar 30, 2024**

SEAN F. MCAVOY, CLERK

**UNITED STATES DISTRICT COURT**  
**EASTERN DISTRICT OF WASHINGTON**

JEANNIE M.,<sup>1</sup>

Plaintiff,

vs.

MARTIN O'MALLEY,  
COMMISSIONER OF SOCIAL  
SECURITY,<sup>2</sup>

Defendant.

No. 2:22-cv-00116-RHW

**ORDER ADOPTING REPORT  
AND RECOMMENDATION TO  
DENY PLAINTIFF'S MOTION  
FOR SUMMARY JUDGMENT  
AND GRANT DEFENDANT'S  
MOTION FOR SUMMARY  
JUDGMENT**

**ECF Nos. 13, 14, 18**

Before the Court is the Report and Recommendation issued by Magistrate  
Judge James. A. Goeke on August 28, 2023, ECF No. 18, recommending  
Plaintiff's Motion for Summary Judgment, ECF No. 13, be denied and Defendant's

---

<sup>1</sup> To protect the privacy of plaintiffs in social security cases, the undersigned  
identifies them by only their first names and the initial of their last names. *See*  
LCivR 5.2(c).

<sup>2</sup> Pursuant to Federal Rule of Civil Procedure 25(d), Martin O'Malley,  
Commissioner of Social Security, is substituted as the named Defendant.

1 Motion for Summary Judgment, ECF No. 14, be granted. Plaintiff filed objections  
2 to the Report and Recommendation and Defendant responded. ECF Nos. 19, 20.  
3 The Court ordered the parties to confer and supplement the record, ECF No. 21,  
4 and they timely complied. ECF No. 22. The Court has considered Plaintiff's  
5 remaining objections and after reviewing the Report and Recommendation, the  
6 Court finds the Magistrate Judge's findings are correct. Therefore, the Court  
7 adopts the Report and Recommendation in its entirety, albeit with the following  
8 explanation.

9 **1. Date Last Insured**

10 Plaintiff has withdrawn her objection to the Report and Recommendation on the  
11 issue of Plaintiff's date last insured. ECF No. 22 at 2. Accordingly, there is no  
12 dispute that the ALJ properly concluded that the relevant period was the brief  
13 period of time from March 13, 2018 through June 30, 2018.

14 **2. Presumption of Continuing Non-disability**

15 The ALJ's finding that the presumption under *Chavez v. Bowen*, 844 F.2d  
16 691, 693 (9th Cir. 1988) applies was, at most, harmless error. *Stout v. Comm'r,*  
17 *Soc. Sec. Admin.*, 454 F.3d 1050, 1055 (9th Cir. 2006) (finding that harmless error  
18 principles apply when an error is inconsequential to the ultimate nondisability  
19 determination). Although the ALJ stated that the *Chavez* presumption applied and  
20 that Plaintiff had not proved changed circumstances indicating greater disability,

1 the ALJ did not functionally apply the presumption. Instead, the ALJ proceeded to  
2 evaluate Plaintiff's claim on the merits. The ALJ's formal finding that Plaintiff did  
3 not rebut the presumption was inconsequential because it did not end or control the  
4 evaluation of Plaintiff's claim. *See e.g., Cha Yang v. Comm'r of Soc. Sec.*, 488 F.  
5 App'x 203, 204 (9th Cir. 2012) (ALJ's misapplication of *Chavez* presumption was  
6 harmless); *McGlothen v. Colvin*, No. 2:15-cv-204-GJS, 2015 WL 5706186, \*3  
7 (C.D. Cal. 2015) (ALJ's "invocation of res judicata" was harmless error because  
8 the "ALJ proceeded with a review of the medical evidence—a review that  
9 approximated the traditional five-step approach").

### 10 **3. Medical Opinion Evidence and Plaintiff's Symptom Claims**

11 The Report and Recommendation properly concludes that substantial  
12 evidence supports the ALJ's finding that Nurse Practitioner Cody Harris' February  
13 17, 2021 opinion was unpersuasive. The ALJ's analysis was governed by the new  
14 regulations which require consideration of supportability and consistency. The  
15 Report and Recommendation notes that the ALJ considered both factors and cited  
16 internal inconsistencies and inconsistencies with pertinent record evidence from  
17 the narrow relevant period. Plaintiff's objection to the R&R rests on identical  
18 arguments that were raised in her motion for summary judgment. Having reviewed  
19 the record, the Court finds the Report and Recommendation properly analyzed the  
20 medical opinion evidence.

1 Plaintiff's objection as to the issue of Plaintiff's symptom complaints is an  
2 ineffective general objection. Plaintiff repeats the arguments made in the motion  
3 for summary judgment and rests on the untrue assertion that the R&R contains "no  
4 analysis or evaluation of the record evidence." ECF No. 19 at 9. The Court need  
5 not review an objection to an R&R that is general and non-specific. *See, e.g.,*  
6 *Warling v. Ryan*, No. CV-12-01396-PHX-DHC (SPL), 2013 WL 5276367, \*2 (D.  
7 Ariz. 2013) ("Because de novo review of an entire R & R would defeat the  
8 efficiencies intended by Congress, a general objection 'has the same effect as  
9 would a failure to object.' ") (citations omitted); *Haley v. Stewart*, No. CV-02-  
10 1087-PHX-DGC (CRP), 2006 WL 1980649, \*2 (D. Ariz. 2006) ("[G]eneral  
11 objections to an R & R are tantamount to no objection at all.").

12 Accordingly, **IT IS HEREBY ORDERED:**

- 13 1. Plaintiff's objections, **ECF No. 19**, to the Report and  
14 Recommendation are **OVERRULED**.
- 15 2. The Report and Recommendation, **ECF No. 18**, is **ADOPTED** in its  
16 entirety.
- 17 3. Plaintiff's Motion For Summary Judgment, **ECF No. 13**, is **DENIED**.
- 18 4. Defendant's Motion, **ECF No. 14**, is **GRANTED**.
- 19 5. The District Court Executive shall update the docket sheet to reflect  
20 the substitution of Martin O'Malley as Defendant.

1 The District Court Executive is directed to enter this Order, **ENTER**  
2 **JUDGMENT** in favor of Defendant, forward copies to counsel and Magistrate  
3 Judge Goeke, and **CLOSE THE FILE**.

4 DATED March 30, 2024.

5 *s/Robert H. Whaley*  
6 ROBERT H. WHALEY  
7 Senior United States District Judge  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20